

## Message Text

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ACTION XMB-07

INFO OCT-01 EA-11 ISO-00 AID-20 CIAE-00 COME-00 EB-11

FRB-02 INR-10 NSAE-00 RSC-01 TRSE-00 OPIC-12 SPC-03

CIEP-02 LAB-06 SIL-01 OMB-01 L-03 DRC-01 /092 W

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R 290941Z MAR 74T

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2312

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PASS EXIM

E.O. 11652: NA

TAGS: EGEN, ETRN, EFIN, US, RP

SUBJECT: RP USE OF L-100-20 AIRCRAFT - GOP REQUEST FOR REVIEW OF  
EXIM POSITION

REFS: A) MANILA 2704, B) STATE 057665

1. BEGIN SUMMARY: GOP HAS REQUESTED RECONSIDERATION  
PRIOR TO APRIL 15 OF EXIM DECISION ON FINANCING FOR  
FOURTH L-100 AIRCRAFT. GOP BELIEVES ITS USE OF  
AIRCRAFT WILL BE FULLY CONSISTENT WITH EXIM REQUIRE-  
MENTS BUT NOTES RESTRICTIONS IMPOSED ON USE  
OF FIRST THREE AIRCRAFT ARE UNWORKABLE AND WILL  
REQUIRE SOME MODIFICATION. ACTION REQUESTED: THAT  
DEPTS OF STATE AND COMMERCE MEET URGENTLY WITH  
EXIM TO REVIEW ENTIRE SUBJECT WITH OBJECTIVE OF  
ARRIVING AT CONDITIONS WHICH WILL PERMIT FINANCING OF  
FOURTH AIRCRAFT END SUMMARY.

2. IN MAR 28 LETTER TO ECON/COM COUNSELOR  
GOP EXEC. SEC'Y MELCHOR REQUESTED RECONSIDERSTION  
OF EXIM DECISION RESPECTING FINANCE OF AN  
ADDITIONAL L-100 AIRCRAFT. BASIS ON WHICH RECON-  
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SIDERATION SOUGHT AS SPECIFIED IN LETTER IS "I FIRMLY

BELIEVE THAT WE HAVE ABIDED BY COVENANTS OF THE EXIM BANK LOAN AGREEMENT IN SPIRIT AS WELL AS IN LETTER" (TEXT POUCHED EA/PHL). EMB ALSO ASKED INFORMALLY BY FIN SEC VIRATA TO REVIEW MATTER WITH EXIM.

3. PER REFTEL A EMBASSY CONTINUING DISCUSS PROGRAMS FOR USE L-100 AIRCRAFT WITH THE OFFICE OF EXEC SEC MELCHOR AND OTHER GOP OFFICIALS. EMBASSY ATTEMPTING AT PRESENT TO ACCELERATE THAT REVIEW IN LIGHT OF (A) ABOVE-MENTIONED REQUEST FROM EXEC SEC MELCHOR; (B) THE PENDING EXPIRATION OF THE PURCHASE ARRANGEMENT WITH LOCKHEED, NOW SET FOR MID-APRIL. AT THIS POINT EMBASSY NOT AWARE OF ANY VIOLATION BY GOP OF DECLARED EXIM INTENT IN RESPECT TO EXISTING CONDITIONS.

4. ALTHOUGH PRESENT LANGUAGE OF AGREEMENT WAS INSERTED AS SPECIFIC REQUEST OF FINANCE SECY VIRATA IT IS SO LIMITING AS TO EXCEED IF NOT TO RUN COUNTER TO THE ORIGINAL INTENT OF THE PARTIES. IN THIS REGARD EMBASSY NOTES THAT A LITERAL INTERPRETATION OF THE TERMS WOULD PROHIBIT THE GOP FROM UTILIZING FINANCED AIRCRAFT ON ANY NORMAL GOVERNMENTAL ADMINISTRATIVE OPERATION, SUCH AS TRANSPORTING GOVT OFFICIALS, AND OTHER ROUTINE ACTIVITIES NOT RELATED TO THE SPECIFIC LIST OF EXTRAORDINARY MISSIONS CONTAINED IN THE CONTRACT.

5. THIS TYPE AND DEGREE OF RESTRICTION IS PATENTLY UNWORKABLE AND PRESUMABLY UNENFORCEABLE. IT COULD NOT POSSIBLY, THEREFORE, BE INTENDED BY EITHER PARTY TO BE SO CATEGORICALLY LIMITING. CONSEQUENTLY, IN ANALYZING THE SPECIFIC AREAS STATED IN THE CONTRACT REGARDING THE USES OF THE L-100, THE ONLY REASONABLE INTERPRETATION IS THAT THE LISTED ACTIVITIES WERE IN ADDITION TO NORMAL GOVT USE.

6. EMBASSY WOULD SUGGEST IN LIGHT OF THE FOREGOING THAT THE DEFECTS IN THE CONTRACT ARE SO FUNDAMENTAL TO THE ECONOMIC OR PRACTICAL USES OF THE AIRCRAFT THAT A MODIFICATION OF THE CONTRACT IS NOW NECESSARY. LIMITED OFFICIAL USE

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IN ADDITION, IT IS APPARENT ON CAREFUL REVIEW OF THE RECORD THAT REVISION OF THE NOV. 1972 AGREEMENT IS ESSENTIAL TO REACHING A MUTUALLY SATISFACTORY QUIETING OF THE ISSUES POSED BY THE OCT. 1973 PRESS PLAY AND RELATED ACTIVITIES. IN THIS REGARD IT SHOULD BE UNDERSTOOD BY DEPT AND BY EXIM BANK THAT GOP AWARENESS OF SOURCES CONCERN RE TERMS OF AGREEMENT IS VERY REAL AS CONVEYED BY BOTH MELCHOR AND VIRATA.

7. WITH RESPECT TO SUCH MODIFICATION, WHILE GOP IS NOT SUGGESTING THAT EXIM IN ANY WAY ACT CONTRARY TO ITS CHARTER, GOP ARGUES THAT A REASONABLE UNDERSTANDING OF INTENT COULD NOT HAVE EXCLUDED SOME CARRIAGE OF MILITARY PERSONNEL AND EQUIPMENT. FOR INSTANCE, IF THE CURRENT APPARENT INTERPRETATION OF EXIM BANK IS ACCEPTED, THE MILITARY PERSONNEL WHICH GOP INTENDED -- WITH THE KNOWLEDGE OF EXIM-- TO ASSIGN TO FLY THESE AIRCRAFT WOULD BE CONTRARY TO THE AGREEMENT AS WOULD ANY USE OF MILITARY PERSONNEL IN CARRYING OUT CIVIC ACTION, DISASTER RELIEF OR ANY OF THE OTHER EXTRAORDINARY ACTIVITIES SPECIFIED IN THE PRESENT CONTRACT. IT WOULD SEEM OBVIOUS THAT NEITHER IN THIS AGREEMENT -- NOR IN OTHERS ENTERED INTO BY EXIM WITH OTHER COUNTRIES SUCH AS PERU -- WOULD IT HAVE BEEN POSSIBLE SPECIFICALLY TO EXCLUDE THE USE OF FINANCED AIRCRAFT TO TRANSPORT MILITARY PERSONNEL AND EQUIPMENT UNLESS DIRECT SUPPORT OF ARMED CONFLICT WERE TO BE INVOLVED.

8. ON THE BASIS OF THE FOREGOING EMBASSY RECOMMENDS THAT STATE AND COMMERCE REVIEW ENTIRE SITUATION WITH EXIM WITH OBJECTIVE OF REDRAFTING PRESENT RESTRICTIVE LANGUAGE TO REFLECT A CLEAR AND WORKABLE SET OF INTENTIONS ON PART EXIM AND GOP. WHILE NOT PROPOSING SPECIFIC LANGUAGE FOR SUCH A REVISION, EMBASSY HOPES THAT IT WILL BE KEPT FULLY INFORMED OF EXIM THINKING WITH RESPECT TO SUCH A REVISION AND THAT IT WILL BE CONSULTED ON THE PROPOSAL OF ANY NEW TERMS AND CONDITIONS TO GOP.  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** MILITARY AIRCRAFT, BANK LOANS, MILITARY SALES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 29 MAR 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** MorefiRH  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
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**Document Unique ID:** 00  
**Drafter:** n/a  
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**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D740070-0331  
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**TAGS:** EGEN, ETRN, EFIN, US, RP, XMB  
**To:** STATE  
**Type:** TE  
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